

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN  
DIVISION

2008 MAR 27 A 9:17  
DEBRA P. HACKETT, CLERK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

James McConico, Jr.  
Plaintiff

vs.

Civil Action no: 2:08-cv-189-MEF

Robert Allen et al,  
Defendants

PLAINTIFF'S OBJECTIONS TO RECOMMENDATION  
OF THE MAGISTRATE JUDGE

COMES now the plaintiff James McConico, Jr., [hereinafter McConico] in the above styled cause of action and vehemently objects on the following grounds to wit:

1. The defendants in this case are Commissioner Richard Allen and Governor Bob Riley both responsible for the state of Alabama's prison system. The Magl Judge has recommended to this U.S. District Court that this civil complaint be transferred to the United States District Court for the Southern District of Alabama. McConico objects!

The United States Congress did not enact rules that govern the statute of limitation and venue of civil complaints involving claims filed about injustices -

within the state of Alabama. Therefore Title 6 Sections 6-2-1 - 6-2-41 and 6-3-1 through 6-3-22 of the Code of Alabama 1975 are controlling.

Section 6-3-9 Code of Alabama 1975 makes it mandatory, where the prison system is involved all actions must be filed in Montgomery County, Alabama. McBris is demanding declaratory and injunctive relief that only these two defendants can a judgment in McBris's behalf can be enforced upon.

Venue is proper in the United States District for the Middle District of Alabama as a matter of law and McBris moves this Court not to adopt the Mag/Judge recommendation. Directing the Mag/Judge to immediately adjudicate McBris's Motion for a Temporary Preliminary Injunction due to the torture he is exposed to by gay members 24 hours a day.

2. McBris objects to the Mag/Judge March 19<sup>th</sup>, 2008 decision on what is entitled a "Order on Motion", wherein the Mag/Judge misconstructs McBris's, "Memorandum of Law, Whether McBris's Claim Meets The Requirement of A Serious Physical Injury of the Prison Litigation Reform Act", as a Motion for Appointment of Counsel.

McBris hasn't filed a Motion for Appointment of Counsel and never meant for his "Memorandum of Law Addressing the Expectation to the PLRA of Serious Physical Injury", to be construed as such.

On page (2) two of the Mag/Judge's recommendation, he does just what -

McGraw Assumed he would do. Referred to the provisions of the "Three Strike" of 28 U.S.C. Section 1415 (g). This was the sole and only purpose of McGraw's, "Memorandum of Law ..." to show the exception applied to him in this case, not A motion for Appointment of Counsel. McGraw objects!

McGraw moves the Court not to adopt the Magistrate Judge Report and Recommendation and send this cause back to the Magistrate Judge to take evidence whether the exception applies in McGraw's behalf.

3. McGraw objects to the Magistrate Judge deferring and denying McGraw an immediate hearing on his request for injunctive relief within 10 days without taking any evidence. And McGraw has provided the Court with A sworn gang member <sup>affidavit</sup> who has risk his life by violating the gang code and switched out their psychological fortune of McGraw. Plus the 60 plus days McGraw has be subjected to this nefarious conduct 24 hours a day suffering physically and mentally.

The Magistrate Judge is either living within A box OR Acting as if Alabama gang members are committing capital murder, murder, Assault and A host of other violent stratagem daily in Alabama. With the evidence presented to the Magistrate Judge McGraw should have been provide relief or A hearing to determine the validity and seriousness of the physical medical danger McGraw is ~~in~~ and suffering. McGraw moves the Court not to adopt the Magistrate Judge's Report and Recommendation and that the U.S. District Court itself set and hold this hearing on McGraw's Request for A TRO ...

WHEREFORE the Above stated Reasons and Statutes McBrine objects to the Magt Judge's Recommendation And moves the Court to not Adopt the Recommendation and provide McBrine immediate relief due to the seriousness of the gang torture he is being subject to without the defendant's ordering their subordinates to comply with the laws of this State, the U.S. Constitution can protect McBrine even in an half hearted Attempt.

Respectfully submitted,  
*James McBrine*  
 # 117315-K-3  
 Holman Unit 3700  
 Attmore, AL. 36503

### CERTIFICATE OF SERVICE

I hereby certify that on the 24<sup>th</sup> day of March, 2008, I have Served a copy of these "objections" upon the following parties via, United States Mail postage prepaid:

Comm. Richard Allen  
 Ala Dept. of Corrections  
 P.O. Box 301501  
 Montgomery, AL. 36130-1501

Governor Bob Riley  
 Governor's Mansion  
 Montgomery, AL. 36104

*James McBrine*  
 # 117315-K-3  
 Holman Unit 3700  
 Attmore, AL. 36503

Mr. James McGraw, Jr.  
#07345-R-3  
Holman Unit 3900  
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"Legal Mail"

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